

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	01cr00307-3 (DLC)
-v-	:	
	:	<u>MEMORANDUM OPINION</u>
OCTAVIO FRIAS,	:	<u>AND ORDER</u>
	:	
Defendant.	:	
-----X	:	

DENISE COTE, District Judge:

Octavio Frias is currently serving a life sentence for murder. The Honorable John F. Keenan, who presided over the trial of Frias and sentenced him, denied Frias' motion for compassionate release on October 14, 2020, and again on August 26, 2022. In a filing of September 27, 2022, Frias renewed his motion for compassionate release. This case has been transferred to this Court, and through an Order of December 16, the Government and Frias were given further opportunities to address Frias' September 27 motion. Frias' motion is being treated de novo by this Court.

The standard for review of a motion for compassionate release pursuant to 18 U.S.C. § 3582 is well established. A court may grant compassionate release to an inmate if the inmate has exhausted his administrative remedies by requesting compassionate release from his warden, and if there are "extraordinary and compelling reasons" warranting a reduced

sentence. District courts may “independently . . . determin[e] what reasons . . . are extraordinary and compelling” for the purpose of the compassionate release determination. United States v. Brooker, 976 F.3d 228, 234 (2d Cir. 2020) (citation omitted). Although a court has broad discretion to consider what circumstances might qualify as extraordinary and compelling, “rehabilitation alone shall not be considered an extraordinary and compelling reason.” Id. at 238 (quoting 28 U.S.C. § 994(t)).

If a court concludes that the petitioner has presented “extraordinary and compelling reasons” for compassionate release, it must also weigh the 18 U.S.C. § 3553(a) sentencing factors before awarding compassionate release. United States v. Keitt, 21 F.4th 67, 71 (2d Cir. 2021). Even if the court concludes that the petitioner has not presented the requisite extraordinary and compelling reason for compassionate release, the Second Circuit has recommended that the court should also assess if the § 3553(a) sentencing factors weigh in favor of granting compassionate release. United States v. Jones, 17 F.4th 371, 374–75 (2d Cir. 2021).

It is assumed for purposes of this Order that Frias has exhausted his administrative remedies. The Bureau of Prisons denied his original motion, and Frias contends it would be futile for him to pursue that application again.

Frias has not presented extraordinary and compelling reasons to warrant a reduction in his sentence. But, even if he had done so, the § 3553(a) factors do not support a reduction in Frias' sentence.

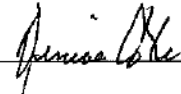
Frias was intimately involved in this ruthless murder. He arranged for the murder and personally identified the victim to his killers by hugging the victim. His medical conditions are not unusual for his age and are being addressed by the Bureau of Prisons. While Frias argues that he would not receive a life sentence if sentenced today, and that a number of other defendants convicted of murder have received sentences less severe than a life sentence, he has not shown that there is any unwarranted disparity in his sentence. Life imprisonment remains the sentence described by the Sentencing Guidelines for murder and life sentences are still imposed for murder in a not insignificant number of cases.

The Court has considered Frias' submissions, including his most recent submission filed on February 28, 2023. Accordingly, it is hereby

ORDERED that Frias' September 27, 2022, renewed petition for compassionate release is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall mail  
Frias a copy of this Order and note mailing on the docket.

Dated: New York, New York  
March 30, 2023

A handwritten signature in black ink, appearing to read "Denise Cote", is positioned above a horizontal line.

DENISE COTE  
United States District Judge